

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Order of the Administrative Law Judge should be affirmed. Claimant alleges that he suffered accidental injury arising out of and in the course of his employment to his low back on December 2, 2002. Claimant, a custodian for respondent, testified that he did substantial lifting, bending and stooping during his

regular day and his back pain gradually worsened after the above date of accident. Respondent, however, contends that claimant failed to prove that he suffered an accidental injury on that date. Respondent contends that claimant came to work the afternoon of December 2, after a five-day Thanksgiving vacation, complaining of back pain. There were conversations between claimant and his coworkers about his playing football over the Thanksgiving break and whether he was injured while playing football.

Two of claimant's supervisors, Gregory Menges (the head building engineer) and Marian (Mary) Kelderhouse (the night lead person), testified that during discussions with claimant, they were advised that claimant's back pain was not associated with his work at respondent. Additionally, the medical notes from the Hillside Medical Office (the office of claimant's family physician, Dr. Joslin) indicated that claimant suffered no known injury. These medical records, dated December 3, 2002, were recorded after claimant went to the doctor the morning of December 3, after awakening in bed with significant back pain.

There is no mention in Dr. Joslin's medical records of any work-related connection to claimant's back pain.

In workers' compensation litigation, it is claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence.<sup>1</sup> Here, the Administrative Law Judge determined that claimant failed to prove that he suffered an accidental injury arising out of and in the course of his employment. The evidence, instead, supports a finding that claimant suffered some type of injury over the Thanksgiving break, with the first noted conversation about claimant's back occurring at approximately 3:00 p.m. on December 2, just before claimant began his regular work shift. As such, the Board finds that claimant has failed to prove the elements necessary to justify an award of compensation. Therefore, claimant's request for benefits is denied and the Order of the Administrative Law Judge is affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated April 14, 2003, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

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<sup>1</sup> K.S.A. 44-501 and K.S.A. 2001 Supp. 44-508(g).

Dated this \_\_\_\_ day of June 2003.

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BOARD MEMBER

c: Kevin T. Stamper, Attorney for Claimant  
Ronald J. Laskowski, Attorney for Respondent  
Nelsonna Potts Barnes, Administrative Law Judge  
Director, Division of Workers Compensation